

NOV 23 2005

REMARKS

Applicants submit that, for at least the following reasons, the rejections are overcome.

Claim Rejections – 35 U.S.C. 112, first paragraph

In the Office Action, claims 1-9 and 12 stand rejected under 35 U.S.C. 112, first paragraph, as failing to comply with the written description requirement. According to the Office Action, the original disclosure does not teach the molded temperature at the range of 160-180 degrees.

Claim 1 has been amended to correctly recite temperature range of 120° – 160°C. Amended claim 1 is presented along with the other claims in the application in a separate document titled "AMENDED CLAIMS" submitted concurrently herewith. The amendment is supported in the original disclosure on page 9, lines 1-2. In view of this amendment, it is respectfully submitted that the rejection under 35 U.S.C. 112, first paragraph, has been overcome and should be withdrawn.

Claim Rejections - 35 U.S.C. 102 and 103

In the Office Action, claims 1, 2 and 7 stand rejected under 35 U.S.C. 102(b) as being anticipated by either Wallace (3,007,594) or MacDonald et al. (2,562,726), or in the alternative, either Wallace or MacDonald et al. in view of Nohara (4,646,925). According to the Office Action, either Wallace or MacDonald et al. teach a container having a first thin-walled bottle with a neck extending from a storage portion, and a minimum wall thickness, and a molded over resin body having a maximum wall thickness at least three times the minimum wall thickness of the storage portion. According to the Office Action, in the alternative, Nohara teaches that it is known in the art to provide thermoplastic outer layer by injection molding (Fig. 6, col. 2, ln. 56). The Examiner further asserts that with respect to the new limitation (the temperature range of 120° – 160°C), the patentability does not depend on its method of production.

In the Office Action, claims 1, 2, 4, 5 and 7-9 stand rejected under 35 U.S.C. 102(b) as being anticipated by Barriere (3,663,259), or in the alternative, under 35 U.S.C. 103(a) as being unpatentable over Barriere in view of Nohara or Wallace.

Claim 3 stands rejected under 35 U.S.C. 103(a) as being unpatentable over Barriere in view of Frye et al. (4,138,027).

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Ser. No. 09/863,845 – Amendment submitted 11/23/05
Examiner: Tri M. Mai - A/u 3727

As an initial matter, Applicant has been unable to find where in each cited reference each element of claim 1 is disclosed as alleged by the Examiner. Because the Examiner has failed to specifically indicate where in each cited reference each element of claim 1 is disclosed, Applicant can only presume that the Examiner has not found each element of claim 1 in the cited references to support the rejections.

The Examiner again takes the position that the plastic in the present invention is no different from the plastic in Barriere. However, the Examiner fails (again) to properly support this position with substantive arguments or information. The Examiner merely declares that the final container is no different from the plastic in Barriere. Applicants respectfully request that the Examiner support this conclusion with substantive arguments or information.

For example, Applicant asserted in an earlier response that thermoplastic molding resin is structurally different from other resins. This position is supported in the definition provided by the Examiner from TheFreeDictionary.com which states "*thermoplastic materials can be remelted and cooled time after time without undergoing any appreciable chemical change*". This clearly indicates that a thermoplastic molding resin is structurally different from other resins that do undergo appreciable chemical change when heated and cooled (e.g., thermosetting resins). In the present Office Action, the Examiner has failed to contradict Applicant's position with substantive arguments or information. The Examiner merely dismisses Applicant's arguments as "not persuasive."

Because the Examiner has not substantively contradicted or refuted Applicant's position, Applicant can only presume that the Examiner concedes at least that thermoplastic molding resin is structurally different from other resins. Accordingly, the Examiner has implicitly conceded that there are structural differences between the present invention as claimed and the cited prior art. Because the Examiner has conceded that there are structural differences between the present invention and the prior art, the present rejections under 35 U.S.C. 102 and 103 are not well taken and must be withdrawn.

Claim 1 recites, in part, a first bottle and a resin body is made from a thermoplastic molding resin injection over-molded at a temperature in the range of 120-160°C about the first bottle.

The Examiner asserts that the limitations do not impart any structure over the containers of Wallace, MacDonald, Nohara or Barriere. Applicant respectfully disagrees.

MPEP 2173.05(g) states: "There is nothing inherently wrong with defining some part of an invention in functional terms. Functional language does not, in and of itself, render a claim improper."

In accordance with MPEP 2173.05(g), the claim language "a resin body made from a thermoplastic molding resin injection over-molded at a temperature in the range of 120-160°C about the first bottle" includes structural and functional recitations which further define the invention and set definite boundaries on the patent protection sought. The language of claim 1 clearly defines what specific type of resin body is molded over the first bottle, i.e., a resin body made from thermoplastic molding resin injection over-molded at a temperature in the range of 120-160°C. This particular type of resin body is not disclosed in the cited prior art.

The references cited by the Examiner, either alone or in combination, do not disclose a bottle and resin body made from thermoplastic molding resin injection over-molded at a temperature in the range of 120-160°C, i.e., each of the structural and functional elements recited in claim 1 of the present invention.

Wallace does not disclose a resin body made from a *thermoplastic* molding resin, does not disclose injection molding and does not disclose injection molding at a temperature in the range of 120-160°C.

MacDonald does not disclose a resin body made from a thermoplastic molding resin, does not disclose injection molding and does not disclose injection molding at a temperature in the range of 120-160°C.

Nohara does not disclose a bottle (it discloses a pre-form), so Nohara does not disclose injection overmolding a resin about a bottle, and does not disclose injection molding at a temperature in the range of 120-160°C.

Barriere does not disclose a resin body made from a thermoplastic molding resin, does not disclose injection molding and does not disclose injection molding at a temperature in the range of 120-160°C.

Frye does not disclose a resin body made from a thermoplastic molding resin, does not disclose injection molding and does not disclose injection molding at a temperature in the range of 120-160°C.

A rejection under 35 U.S.C. 102(b) requires that each element of a pending claim be disclosed in a single prior art reference.

No single reference cited by the Examiner includes each element recited in claim 1. Thus, claim 1 is not anticipated by any cited reference and cannot be rejected under 35 U.S.C. 102(b). Because claim 1 is not anticipated by the cited prior art, it should be allowed. Claims 2, 4, 5 and 7-9 depend from and include all of the recitations of claim 1 and should also be allowed.

In the alternative, the Examiner states that it would have been obvious to one of ordinary skill in the art to provide the outer body by injection molding in Barriere as taught by any of Nohara or Wallace.

A rejection under 35 U.S.C. 103 requires a combination of the cited references teach or suggest the elements recited in a claim.

No combination of the cited references teaches or suggests a bottle and resin body made from thermoplastic molding resin injection over-molded at a temperature in the range of 120-160°C.

Contrary to what is asserted in the Office Action, Wallace does not teach or suggest injection molding. Wallace teaches filling a mold with heat expansible plastic beads. This is not injection molding.

Nohara teaches injection molding, but does not teach or suggest that injection molding is suitable for use on a bottle according to the present invention. In fact, Nohara teaches away from the present invention by teaching injection molding over a pre-form, and by supporting the pre-form with an internal core.

Furthermore, combining the teachings of two references requires *at least* a suggestion that one would be motivated to make the combination. This is generally understood to be at least a suggestion that the combined teachings of the two references would yield a benefit or an advantage. The Examiner did not assert such a benefit or advantage, and there is in fact no benefit or advantage taught or suggested in the cited reference that would motivate one to combine the teachings of any two references.

The present claims recite a thermoplastic molding resin injection over-molded at a temperature in the range of 120-160°C. None of the cited references teach or suggest a resin body made from a thermoplastic molding resin injection overmolded at a temperature in the range of 120-160°C. Therefore, there is no combination of

references whose teachings would yield the present article as claimed. There is no combination of the cited references that would render the present invention obvious.

The Examiner fails to provide a reference or some other information that indicates that it is well known to inject thermoplastic resins over thin walled bottles. The Examiner merely states that "one of ordinary skill would recognize..."

Applicant respectfully suggests the Examiner's failure to provide a reference or some other information indicating that it is well known to inject thermoplastic resins over thin walled bottles is due to the fact that it is not well known. Articles of the type recited in the present claims have previously not been commercially available because those skilled in the art considered them unfeasible. It was believed that the high pressures and high temperatures involved would crush the thin walled bottle, particularly if the bottle was made of a brittle material like glass, or a malleable material like aluminum. For this reason, Barriere teaches casting or dipping the bottle, MacDonald teaches casting and Wallace teaches filling without injection. Valyi and Nohara teach the use of a core that internally supports sidewalls of the container during pressure molding. All of these references teach away from the present invention as claimed.

The present claims distinguish structurally over the cited prior art references. The present amendments set definite boundaries on the patent protection sought. None of the cited prior art references either alone or in combination teach or suggest a resin body made from a thermoplastic resin injection over-molded onto a bottle at a temperature in the range of 120-160°C.

Also, as noted in Applicants' earlier response, by granting patent claims with recitations that appear to be product-by-process, but are actually structural differences, the U.S. Patent Office has recognized such distinctions. See for example, Wallace 3,007,594 and Nohara 4,646,925, describing what at first glance could be construed as identical products. Nohara, issued almost 30 years after Wallace, includes as a recitation "...portions are integrally formed of a thermoplastic polyester...". While this appears to be product-by-process language, it is more clearly understood by those skilled in the art as structurally distinguishing the component from non-Integrally formed components.

In view of the amendments and remarks above, it is respectfully submitted that the present invention is patentable over the cited prior art. Early and favorable consideration is respectfully requested. Applicants reserve the right to file

division, continuation and continuation-in-part applications to prosecute any inventions or species.

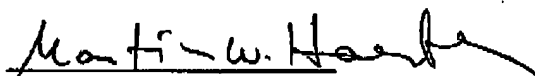
Submitted concurrently herewith is a Petition for Extension of Time to extend the time to respond by two months from September 23, 2005 to November 23, 2005. The Petition includes authorization for the Commissioner to charge the fee for extension to Deposit Account No. 05-1320.

If there are any other issues remaining which the Examiner believes could be resolved through telephone contact, the Examiner is respectfully encouraged to call the undersigned at the telephone number indicated below.

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